



[6450-01-P]

DEPARTMENT OF ENERGY

10 CFR Part 590

Procedures for Changes in Control Affecting Applications and Authorizations to Import or Export Natural Gas

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of procedures.

SUMMARY: The U.S. Department of Energy's (DOE or the Department) regulations require applications to export natural gas from the United States to identify "all the participants in the transaction, including the parent company, if any, and identification of any corporate or other affiliations among the participants." In many cases, either before or after a final export authorization has been issued, ownership or management of the exporting entity changes hands, resulting in a change in control (CIC). This document sets forth procedures that will apply when applicants to import or export natural gas or those entities that have already received an import or export authorization undergo changes in control.

DATES: Effective [insert date of publication in the Federal Register], and applicable beginning September 26, 2014

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 3(a) of the Natural Gas Act (NGA), 15 U.S.C. 717b(a), no person may import or export natural gas without authorization from DOE, and DOE will approve such imports or exports unless, after opportunity for a hearing, it determines that imports or exports are not consistent with the public interest. Section 3(c) of the NGA provides that exports of natural gas to countries with which the United States has entered into a free trade agreement (FTA) providing for national treatment for trade in natural gas (FTA countries),¹ and all imports of liquefied natural gas (LNG) from any country, are deemed in the public interest and must be granted without modification or delay. 15 U.S.C. 717b(c).

DOE's regulations at 10 CFR 590.204(b) require applicants to amend pending applications whenever there are changes in material facts or conditions upon which the proposal is based. Additionally, DOE's regulations at 10 CFR 590.405 state that authorizations to import or export natural gas shall not be transferable or assignable unless specifically authorized by the Assistant Secretary for Fossil Energy. In applying § 590.405, DOE has made clear that a change in control of the authorization holder may occur through asset sale or stock transfer or by other means. DOE has also explained that it construes a change in control to mean a change, directly or indirectly, of the power to direct the management or policies of an entity whether such power

¹ "Non-FTA countries" refers to those nations with which the United States has not entered into a FTA providing for national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy. DOE reviews applications for exports of natural gas to non-FTA countries under NGA section 3(a).

is exercised through one or more intermediary companies or pursuant to an agreement, written or oral, and whether such power is established through ownership or voting of securities, or common directors, officers, or stockholders, or voting trusts, holding trusts, or debt holdings, or contract, or any other direct or indirect means. DOE has explained that a rebuttable presumption that control exists will arise from the ownership or the power to vote, directly or indirectly, 10 percent or more of the voting securities of such entity.

II. Discussion

This document announces new procedures to amend both applications pending before DOE and authorizations already issued by DOE to reflect changes in control of the proposed or actual importing or exporting entity (or entities). These procedures are intended to streamline the process for making these changes without affecting DOE's ability to make the public interest determination required by Section 3(a) of the NGA. These procedures do not affect the existing standard used by DOE to determine if a change in control has occurred or will occur.

a. Timing

Entities may file notice of changes in control before such changes have been effectuated but, in all cases, must file notice of changes in control no later than 30 days after such changes have been effectuated or 30 days after publication of this document, whichever is later, unless good cause is shown for a later filing.

b. Non-FTA Natural Gas Export Applications and Authorizations

With respect to pending non-FTA export applications, *i.e.* proceedings in which DOE has not yet issued a final order, applicants may amend their applications to reflect a change in control by submitting notice of such amendment to DOE and serving that notice on other parties in the proceeding, as provided in 10 CFR 590.107. DOE will give immediate effect to the amendment

but will accept and consider answers to the notice of amendment received within 15 days of service of the applicant's pleading. *See* 10 CFR 590.302(b). DOE then will address the issues raised in any answers to such an amendment in its final order on the pending application. Unless the opponents of the change in control demonstrate that the change renders the underlying application inconsistent with the public interest, or unless DOE independently makes such a determination, no further action will be taken by DOE on the change in control and the amendment will continue to be given effect.

With respect to final non-FTA export authorizations already issued by DOE, authorization holders may submit a statement of change in control to DOE using one of the following methods: (1) e-mailing the filing to fergas@hq.doe.gov with CIC and the FE Docket No. in the title line; (2) mailing an original and three paper copies of the filing to U.S. Department of Energy (FE-34), Office of Oil and Gas Global Security and Supply, P.O. Box 44375, Washington, DC 20026-4375; or (3) hand delivering an original and three paper copies of the filing to U.S. Department of Energy (FE-34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E-042, 1000 Independence Avenue, SW, Washington, DC 20585.

Upon receipt of such a statement of change in control, DOE will give effect to the change in control and will publish a notice of the change in the Federal Register. Interested persons will be provided 15 days from the date of publication in the Federal Register in order to move to intervene, protest, and answer the statement of change in control. If no interested person protests the change in control and DOE takes no action on its own motion, the amendment will be deemed granted 30 days after publication in the Federal Register. If one or more protests are submitted, DOE will review any motions to intervene, protests, and answers, and will issue a

determination as to whether the proposed change in control has been demonstrated to render the underlying authorization inconsistent with the public interest.

c. FTA Long-Term Natural Gas Applications and Authorizations and Non-FTA Long-Term LNG Import Applications and Authorizations

With respect to pending FTA long-term natural gas import or export applications and pending non-FTA long-term LNG import applications, applicants may amend their applications to reflect a change in control by submitting a notice of such amendment to DOE. DOE will give immediate effect to the amendment and take no further action.

With respect to FTA long-term natural gas import or export authorizations and non-FTA long-term LNG import authorizations already issued by DOE, authorization holders may submit a statement of change in control to DOE using one of the three methods set forth above. Upon receipt of the statement, DOE will give immediate effect to the change in control and take no further action.

Long-term FTA applicants or authorization holders simultaneously seeking to amend their non-FTA applications or authorizations may provide notice to DOE of the change in control in a single notice or statement, respectively, so long as the desired change to the long-term FTA application or authorization is described clearly with reference to the applicable orders or docket numbers.

This document is applicable beginning September 26, 2014.

Issued in Washington, D.C., on October 16, 2014.

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